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NASA Procedural Requirements

COMPLIANCE IS MANDATORY**NPR 8580.1**Effective Date: November 26,
2001Expiration Date: November
26, 2009[Printable Format \(PDF\)](#)

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 (NASA Only)

Subject: Implementing The National Environmental Policy Act And Executive Order 12114

Responsible Office: Environmental Management Division

[| TOC](#) | [Preface](#) | [Chp1](#) | [Chp2](#) | [Chp3](#) | [Chp4](#) | [Chp5](#) | [Chp6](#) | [Chp7](#) | [Chp8](#) | [Chp9](#) | [Chp10](#) |
[Chp11](#) | [Chp12](#) | [Chp13](#) | [AppdxA](#) | [AppdxB](#) | [AppdxC](#) | [AppdxD](#) | [AppdxE](#) | [AppdxF](#) | [AppdxG](#) |
[AppdxH](#) | [AppdxI](#) | [AppdxJ](#) | [AppdxK](#) | [AppdxL](#) | [ALL](#) |

CHAPTER 10. Executive Order 12114, Environmental Effects Abroad of Major Federal Actions

10.1 Executive Order 12114

10.1.1 Executive Order (EO) 12114 was issued January 4, 1979, "solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions" (EO 12114, Section 3-1). The EO also specifically provided that its purpose is to enable the decisionmakers of the Federal agencies to be informed of pertinent environmental considerations, and factor such considerations in their decisions; however, such decisionmakers must still take into account considerations such as foreign policy, national security, and other relevant special circumstances (EO 12114, Sections 1-1 and 2-5).

10.1.2 EO 12114 defined the environment to mean only the natural and physical environment, but not social, economic, or other environments (EO 12114, Section 3-4). Section 2-3 of the EO encompassed the following categories of major Federal actions abroad:

- a. Actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans and the atmosphere).
- b. Actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action (e.g., the reentry of a spacecraft and impact on such nation's environment).
- c. Actions significantly affecting the environment of a foreign nation which provide to that nation:
 - (1) A product or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law, in the U.S., because its toxic effects on the environment create a serious public health risk (e.g., DDT, asbestos, polychlorinated biphenyl (PCB); but not, for example, sulfur dioxide, chlorine, or ammonia).
 - (2) A physical project which in the U.S. is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances (e.g., a nuclear reactor; but not for example export of a nuclear fuel for commercial power generation).
- d. Actions significantly affecting natural or ecological resources of global importance, either designated for protection by the President or protected by a binding international agreement (e.g., protection of whales or migratory species; or binational transboundary agreements such as those between the United States and Canada).

10.1.3 In addition, and with the exception of global environmental impacts (item 1 above), the actions are subject to

exemptions and considerations enumerated under Section 2-4 of the EO. These exemptions include actions such as those taken by the President or pursuant to a direction of the President (e.g., national interest or security, or armed conflict); export licenses or permits or export approvals; relating to nuclear activities, other than actions providing a nuclear production or utilization, or waste management facility; and disaster or emergency relief. Further, the agency may consider relevant factors such as: modification of the content, timing, and availability of its environmental documents; diplomatic relations; international competition; or the difficulty of obtaining the information needed to prepare an adequate assessment.

10.1.4 Section 3-2 of the EO requires that the U.S. Department of State (DOS) coordinate the communications with foreign governments concerning environmental agreements or other arrangements pursuant to this EO. (See also, NASA regulations at 14 CFR §1216.321, EO 12114, and Council on Environmental Quality guidance in Appendix F.)

10.2 What EO 12114 is Not

10.2.1 EO 12114 is not NEPA or the implementation of NEPA; however, EO 12114 does further the purpose of NEPA.

10.2.2 EO 12114 does not create and must not be construed as creating a cause of action against the Agency, and does not afford any person or entity legal standing to pursue a cause of action. While it fosters awareness of environmental concerns and facilitates environmental cooperation with foreign nations, EO 12114 does not take away the discretion of the Head of the Agency, or assign the Agency determination to any other Agency or subject it to higher review.

10.2.3 It does not mandate duplication or multiplicity of environmental documentation in the event of multiple environmental impacts (see EO 12114, Section 3-5).

10.3 The Role of the Office of the General Counsel

The Office of the General Counsel, or designee, is the NASA point of contact and official NASA representative on any matter involving EO 12114. Accordingly, any action by, or any implementation or legal interpretation of EO 12114 requires consultations with and the concurrence of the designee of the Office of the General Counsel.

10.4 Other NASA Responsibilities and Actions

10.4.1 The Sponsoring Entity and local Environmental Management Office (EMO) contemplating an action which would have global environmental effects or effects outside the territorial jurisdiction of the U.S. must notify the NASA Headquarters/Environmental Management Division (HQ/EMD). The HQ/EMD will, in turn, coordinate with the Office of the General Counsel (see section 10.3), the Assistant Administrator for External Relations, and other NASA organizations as appropriate; and assist the Sponsoring Entity to develop a plan of action, (such a plan is subject to the concurrence of the Office of the General Counsel). For illustrative purposes only, such a plan may include the following:

- a. Environmental evaluations shall be timely conducted and coordinated, during the planning of the action, by the Sponsoring Entity and the local EMO.
- b. The early evaluation should identify any agency whose expertise or cooperation may be required, comply with the NASA regulations (14 CFR §1216.321) and this chapter (see the EO at Appendix F), and other pertinent provisions of this NASA Procedural Requirement.
- c. The participation of cooperating agency(ies) will be facilitated by the HQ/EMD in full consultation and coordination with the Office of the General Counsel, as well as the Assistant Administrator for External Relations respecting DOS or foreign participation.

10.4.2 For effects covered by EO 12114, even if the determination by the Sponsoring Entity and the local EMO is that the impacts are not significant, the determination must be submitted to the HQ/EMD by a memorandum or Record of Environmental Consideration. The submittal must state the reasoning for the determination of not significant impacts. The HQ/EMD will follow the procedures stated in the first paragraph of this section of this chapter. If after such coordination, and concurrence by the Office of the General Counsel, it is determined that effects of the action are significant, the Assistant Administrator for Institutional and Corporate Management will notify the Sponsoring Entity and provide the follow-on appropriate procedures. These may include:

- a. If the environmental impact(s) significantly affect the global commons, an EIS is required (EO 12114, see Section 2-4(b) (i)).
- b. If the impact(s) significantly affect one or more foreign nations, a bilateral or multilateral environmental studies, a concise review of environmental issues involved, or other appropriate document (e.g., assessment or analyses), as determined by NASA, may be required (EO 12114, see Section 2-4(b)(ii)&(iii)).

c. If impact(s) significantly affect natural or ecological resources of global importance, an EIS, environmental assessment (EA), concise reviews of environmental issues involved, or other appropriate environmental documents, as determined by NASA, may be required (EO 12114, see Section 2-4(b)(iv)).

10.4.3 The bilateral or multilateral environmental studies, or the concise reviews of environmental issues involved, may follow the format of an EA except, of course, that any reference to the need for an EIS or a finding of no significant impact would be omitted. NASA (i.e., the Assistant Administrator for Institutional and Corporate Management, HQ/EMD, in concert with the Office of the General Counsel, and the Assistant Administrator for External Relations, and in coordination with the Sponsoring Entity) will consult and coordinate with the DOS to ascertain, through official channels, the extent of participation by, or contribution of or from, the affected nation(s), in preparation of any environmental documents. The level of the environmental document may then be determined based on the outcome of the consultations.

10.4.4 Environmental documents prepared pursuant to this EO must be submitted to the HQ/EMD for coordination with the Office of the General Counsel, the Assistant Administrator for External Relations, and other appropriate NASA organizations. If the views of the NASA concurring offices and cooperating entity, if any, are that the action should proceed, the AA for Institutional and Corporate Management will submit the documentation and recommendations to the Assistant Administrator of the organization responsible for deciding whether to implement the action. If an issue remains unresolved or if one NASA organization withholds its concurrence, the matter should be promptly coordinated with the Office of the General Counsel for resolution. If the issue or nonconcurrence remains unresolved, the AAMS (in coordination with the General Counsel, the Assistant Administrator for External Relations, and other NASA organizations as appropriate) may recommend to the Sponsoring Entity that the matter be elevated for resolution to the Office of the NASA Administrator through appropriate channels.

| [TOC](#) | [Preface](#) | [Chp1](#) | [Chp2](#) | [Chp3](#) | [Chp4](#) | [Chp5](#) | [Chp6](#) | [Chp7](#) | [Chp8](#) | [Chp9](#) |
[Chp10](#) | [Chp11](#) | [Chp12](#) | [Chp13](#) | [AppdxA](#) | [AppdxB](#) | [AppdxC](#) | [AppdxD](#) | [AppdxE](#) |
[AppdxF](#) | [AppdxG](#) | [AppdxH](#) | [AppdxI](#) | [AppdxJ](#) | [AppdxK](#) | [AppdxL](#) | [ALL](#) |

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